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DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

(T.D. 74-301)

Presidential Proclamation—Sugars, sirups and molasses

Presidential Proclamation No. 4334 establishes tariffs and quotas on certain sugars, sirups and molasses

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 5, 1974.

There is published below Presidential Proclamation No. 4334 of November 18, 1974, which modifies Subpart A, Part 10, Schedule 1, of the Tariff Schedules of the United States (TSUS), by adding a new Headnote "3" to these headnotes. This Headnote 3 determines the quantity of sugar, sirups, and molasses described in items 155.20 and 155.30, TSUS, that may be imported in any calendar year.

The quotas on certain sugars, sirups and molasses shall apply to articles entered, or withdrawn from warehouse, for consumption on and after January 1, 1975, and shall remain in effect until the President otherwise proclaims or until otherwise superseded by law.

This Proclamation was published in the Federal Register on November 20, 1974 (39 F.R. 40739).

(R:CV:MC)

SALVATORE E. CARAMAGNO,
for LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

BY THE PRESIDENT OF THE UNITED STATES

A PROCLAMATION

1. WHEREAS, pursuant to section 201(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1821(a)), on June 30, 1967, the President entered into a trade agreement consisting of the Geneva (1967) Protocol to the General Agreement on Tariffs and Trade, including a schedule of United States concessions annexed thereto (hereinafter

referred to as "Schedule XX (Geneva—1967)", together with the Final Act Authenticating the Results of the 1964–67 Trade Conference Held under the Auspices of the Contracting Parties to the General Agreement, and, by Proclamation No. 3822 of December 16, 1967 (82 Stat. 1455) proclaimed such modifications of existing duties and other import restrictions of the United States and such continuance of existing customs or excise treatment of articles imported into the United States as were then found to be required or appropriate to carry out that agreement on and after January 1, 1968;

2. WHEREAS, among such modifications and continuances, was Note 1 of Unit A, Chapter 10, Part I of Schedule XX (Geneva—1967);

3. WHEREAS, Headnote 2, Subpart A, Part 10 of Schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202, hereinafter referred to as (TSUS)), which was added to the TSUS by Proclamation No. 3822 on the basis of said note 1 referred to in recital 2, provides in relevant part as follows:

> 2. The rates in column numbered 1 in items 155.20 and 155.30 on January 1, 1968, shall be effective only during such time as Title II of the Sugar Act of 1948 or substantially equivalent legislation is in effect in the United States... *Provided*,
>
> (i) That, if the President finds that a particular rate not lower than such January 1, 1968, rate, limited by a particular quota, may be established for any articles provided for in item 155.20 or 155.30, which will give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, he shall proclaim such particular rate and such quota limitation, to be effective not later than the 90th day following the termination of the effectiveness of such legislation;

4. WHEREAS, Section 201(a)(2) of the Trade Expansion Act of 1962 authorizes the President to proclaim the modification or continuance of any existing duty or other import restriction or such additional import restrictions as he determines to be required or appropriate to carry out any trade agreement entered into under the authority of that Act;

5. and Whereas it is determined that the rates and quota limitation hereinafter established are appropriate to carry out the portion of a trade agreement referred to in recitals 2 and 3, and give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade;

Now, Therefore, I, Gerald R. Ford, President of the United States of America, acting under the authority vested in me by the Constitution and statutes, including Section 201(a)(2) of the Trade Expansion Act of 1962 and in conformity with Headnote 2 of Subpart A of Part 10 of Schedule 1 of the TSUS do hereby proclaim until otherwise superseded by law:

(1) Subpart A, Part 10, Schedule 1 of the TSUS is modified by adding thereto a new headnote as follows:

> (3) The total amount of sugars, sirups, and molasses described in items 155.20 and 155.30, the products of all foreign countries, entered in any calendar year shall not exceed, in the aggregate,

7,000,000 short tons, raw value. For the purposes of this headnote, the term "*raw value*" means the equivalent of such articles in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury. The principal grades and types of sugar shall be translated into terms of raw value in the following manner:

(i) For sugar described in item 155.20, by multiplying the number of pounds thereof by the greater of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion).

(ii) For sugar described in item 155.30, by multiplying the number of pounds of the total sugars thereof (the sum of the sucrose and reducing or invert sugars) by 1.07.

(iii) The Secretary of the Treasury shall establish methods for translating sugar into terms of raw value for any special grade or type of sugar for which he determines that the raw value cannot be measured adequately under the above provisions.

(2) The rate of duty in rate column numbered 1 for items 155.20 and 155.30 is established as follows:

155.20 ------	0.6625¢ per lb. less 0.009375¢ per lb. for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.428125¢ per lb.
155.30 ------	Dutiable on total sugars at the rate per lb. applicable under Item 155.20 to sugar testing 100 degrees.

(3) The provisions of this proclamation shall become effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after January 1, 1975, and shall remain in effect until the President otherwise proclaims or until otherwise superseded by law.

In Witness Whereof, I have hereunto set my hand this sixteenth day of November, in the year of our Lord nineteen hundred seventy-four, and of the Independence of the United States of America the one hundred ninety-ninth.

GERALD R. FORD.

(T.D. 74-302)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 3, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or

more from the quarterly rate published in Treasury Decision 74–264 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Austria schilling:	
November 18, 1974	$0.0567
November 19, 1974	.0565
November 20, 1974	.0561
November 21, 1974	*
November 22, 1974	.0561
Belgium franc:	
November 18, 1974	$0.026875
Denmark krone:	
November 18, 1974	$0.1719
Germany deutsche mark:	
November 18, 1974	$0.4102
November 19, 1974	.4026
November 20, 1974	.3994
November 21, 1974	*
November 22, 1974	.4030
Malaysia dollar:	
November 18, 1974	$0.4380
November 19, 1974	.4395
November 20, 1974	.4363
Sweden krona:	
November 18, 1974	$0.2367
Switzerland franc:	
November 18, 1974	$0.3835
November 19, 1974	.3772
November 20, 1974	.3620
November 21, 1974	*
November 22, 1974	.3652

* Use quarterly rates.

(LIQ–3–O:D:T)

R. N. MARRA,
Director,
Duty Assessment Division.

[Published in the Federal Register December 12, 1974 (39 FR 43318)]

(T.D. 74-303)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 2, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR Part 159, Subpart C).

Hong Kong dollar:	
November 18, 1974	$0.1995
November 19, 1974	.1995
November 20, 1974	.1995
November 21, 1974	.1995
November 22, 1974	.2000
Iran rial:	
November 18–22, 1974	$0.0149
Philippines peso:	
November 18, 1974	$0.1413
November 19, 1974	.1413
November 20, 1974	.1413
November 21, 1974	.1414
November 22, 1974	.1415
Singapore dollar:	
November 18, 1974	$0.4375
November 19, 1974	.4390
November 20, 1974	.4359
November 21, 1974	.4299
November 22, 1974	.4305
Thailand baht (tical):	
November 18–22, 1974	$0.0495

(LIQ-3-O:D:T)

R. N. MARRA,
Director,
Duty Assessment Division.

(T.D. 74-304)

Ports of entry—Customs Regulations amended

Changes in the Customs Field Organization, sections 1.2(c) and 1.3(d), Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
Washington, D.C., December 9, 1974.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 1—GENERAL PROVISIONS

On August 13, 1974, notice of a proposal to change the designation of Albuquerque, New Mexico, in the El Paso, Texas, Customs district (Region VI), from a Customs station to a Customs port of entry was published in the Federal Register (39 FR 28996). No comments were received regarding this proposal.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to authority provided by Treasury Department Order No. 190, Rev. 9 (38 FR 17517), the designation of Albuquerque, New Mexico, as a Customs station in the El Paso, Texas, Customs district (Region VI) is hereby revoked and Albuquerque, New Mexico, is hereby designated a Customs port of entry in the El Paso, Texas, Customs district (Region VI).

The geographical limits of the port of entry will include all of the territory within the following boundaries:

> Beginning at the northwest corner of the intersection of the northern boundary of Bernalillo County with the eastern boundary of Valencia County and proceeding in a southeasterly, then easterly, direction along the boundary between Bernalillo and Valencia counties to the intersection of such boundary with Interstate No. 25, then proceeding in a southerly direction along Interstate No. 25 in Valencia County to its intersection with the northern boundary of Socorro County, then proceeding in an easterly direction along the northern boundary of Socorro County to its intersection with New Mexico State Highway No. 47, then proceeding in a northerly direction along New Mexico State Highway No. 47 in Valencia County to its intersection with

563-242—74——2

the southern boundary of Bernalillo County, then proceeding in an easterly, then southerly, then easterly, direction along the southern boundary of Bernalillo County to its intersection with New Mexico State Highway No. 14, then proceeding in a northerly direction along New Mexico State Highway No. 14 in Bernalillo County to its intersection with New Mexico State Highway No. 44, then proceeding in a northwesterly direction along New Mexico State Highway No. 44 into Sandoval County to the intersection of Highway No. 44 with New Mexico State Highway No. 528, then proceeding in a southerly direction along New Mexico State Highway No. 528 to its intersection with Idalia Road, then proceeding in a westerly direction on Idalia Road to its intersection with Chayote Road, then proceeding in a northerly direction on Chayote Road to its intersection with Progress Boulevard, then proceeding in a westerly direction on Progress Boulevard to its intersection with Encino Boulevard, then proceeding in a southeasterly direction on Encino Boulevard to the northern boundary of Bernalillo County, then proceeding west along the northern boundary of Bernalillo County to the eastern boundary of Valencia County.

To reflect these changes, the table in section 1.3(d) of the Customs Regulations (19 CFR 1.3(d)) is amended by deleting "Albuquerque N. Mex." from the column headed "Customs stations" and "El Paso." from the column headed "Ports of entry having supervision" in the El Paso, Texas, district, and the table in section 1.2(c) of the Customs Regulations (19 CFR 1.2(c)) is amended by inserting "Albuquerque, New Mexico (including the territory described in T.D. 74-304)" directly below "EL PASO, TEX. (T.D. 54407)." in the column headed "Ports of entry" in the El Paso, Texas, Customs district (Region VI).

(Sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended (19 U.S.C. 1, 2))

It is desirable to make the benefits of this designation of Albuquerque, New Mexico, as a Customs port of entry available to the public as soon as possible. Therefore, good cause is found for dispensing with the delayed effective date provision of 5 U.S.C. 553(d).

Effective date. This amendment shall be effective upon publication in the Federal Register.

(ADM-9-03)

DAVID. R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the Federal Register December 16, 1974 (39 FR 43536)]

Protest Review Decisions

DEPARTMENT OF THE TREASURY
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 4, 1974.

The following are decisions made by the United States Customs Service on protests filed under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514,) and with respect to which further review was requested and granted under sections 174.23 and 174.24, Customs Regulations.

SALVATORE E. CARAMAGNO,
for LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

September 19, 1974

PRD 74-24

District Director of Customs
Seattle, Washington 98104

DEAR SIR:

Re: Decision on Application for Further Review of Protest No. 30043000179

This decision concerns a protest filed against your classification of certain plastic fishing floats under item 770.80, Tariff Schedules of the United States (TSUS), in the liquidation of entry Nos. 114855 of April 12, 1973, 115437 of April 25, 1973, and 115649 of April 30, 1973, all filed at the port of Blaine, Washington.

The merchandise is invoiced as new type vinyl floats with dark blue grommets, NR-16 and NR-22. While samples from the shipments covered by the entries are not available, we do have a representative sample. This sample float is composed of polyvinyl chloride expanded or foamed plastic and is used on commercial fishing nets. It is barrel shaped, measures approximately 5¾ inches in length and 3½ inches in diameter, and has a hole, ¾-inch in diameter, lengthwise through the center. A plastic grommet is affixed at each end of the hole.

A portion, ¾-inch in width, was cut from one end of the float. This portion, when placed in the palm of the hand and compressed, returned to its shape after release of the pressure. The cut also revealed that the cellular construction of the float is closed. The float, as a whole, cannot be bent by hand. However, pressure of the thumb on any portion of the float will result in an indentation which soon disappears after release of the pressure as the float resumes its original shape.

The floats are claimed by the protestant to be classifiable under the provision for expanded or foamed plastics, and articles not specially provided for wholly or almost wholly of such plastics, not flexible, in item 770.30, TSUS, and not under the provision for expanded or foamed plastics, and articles not specially provided for wholly or almost wholly of such plastics, flexible, other, in item 770.80, TSUS, as classified by you.

The question presented is whether the floats are flexible and whether this determination is to be made on the characteristics of the plastic used in making the floats or on the characteristics of the float as a whole. The protestant also claims that it received an unfavorable ruling dated July 12, 1971, which was not issued in compliance with section 1315(d), title 19, United States Code, in that no notice was given of a change in an established and uniform practice in the classification of the merchandise to a higher rate.

In *Sekisui Products, Inc.* v. *United States*, 63 Cust. Ct. 123, C.D. 3885 (1969), the court had before it the question of whether certain corrugated polyvinyl chloride panels were flexible and the parties agreed that the word "flexible" was properly defined in Webster's Third New International Dictionary of the English Language, Unabridged (1961), as follows:

> 1: capable of being flexed: capable of being turned, bowed, or twisted without breaking. * * * Syn. Elastic, resilient, springy, supple: Flexible is applicable to anything capable of being bent, turned, or twisted without being broken and with or without returning of itself to its former shape.

The court also found that there was no requirement that for an article to be flexible it must be capable of being bent, bowed, or twisted in every direction.

Bearing on the question of flexibility, we held in T.D. 70–60(5), 4 Cust. Bull. 127 (1970), that the question of whether certain fishing floats were flexible depended upon whether the expanded or foamed plastic of which they were composed was compressible. As previously reported, the examination of the float discloses that the whole cannot be bent by hand, but that segments of the float can be compressed and are resilient, as well as the entire surface, exclusive of the grommets.

The superior heading of items 770.30 and 770.80 does not distinguish for the purpose of this case between the expanded or foamed plastic as a material and articles wholly or almost wholly of such plastic, and we find nothing in the legislative history which would enlighten us. It would appear, however, that the superior heading under consideration is concerned with a type of plastic and articles made from such plastic. Under the circumstances, it is our opinion that the determination of whether the imported floats are flexible should be governed by the characteristics of the plastic used in making the floats, rather than the floats. Otherwise, there would be a classification of the float different from that of the characteristics of the plastic material of which it is made. We do not believe that the Congress intended such a result by the language used.

Accordingly, it is our opinion that the floats composed of flexible plastic are classifiable under item 770.80, TSUS.

In support of its position that we did not comply with the provisions of section 1315(d), the protestant cited our letters of May 27, 1970, and July 7, 1970, holding that certain sample floats designated as FL–17, FL–6, and old style FL–14 "Gundry," and the new style FL–14 "Redden" were not flexible. There was no publication of those letters. Therefore, under the provisions of section 152.14, Customs Regulations, those letters cannot be deemed to constitute a uniform and established practice within the meaning of section 1315(d). It follows that our letter of July 12, 1971, in which the protestant was notified before importation of the instant merchandise that compressible floats would be regarded as flexible, was not subject to the publication requirements of section 1315(d), if the merchandise in that ruling was similar to the merchandise in the earlier letters thereby resulting in a change in classification.

Under the circumstances, you are hereby directed to deny the protest in full.

Sincerely yours,

SALVATORE E. CARAMAGNO,
Director,
Classification and Value
Division.

October 1, 1974

PRD 74–25

District Director of Customs
Seattle, Washington 98104

DEAR SIR:

Re: Decision on Application for Further Review of Protest No. 30042001496

This protest was filed on October 13, 1972, and was against your decision in the liquidation at the port of Blaine, Washington, of the following entries:

100795	101037	101363	101656
100798	101041	101364	101797
100801	101203	101390	101798
100931	101288	101452	101948

The merchandise under consideration, imported from Canada, consists of wood pallets used for transporting cartons of nails into the United States. The nails were classified under items 646.26 and 646.30, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 0.1 cent per pound and 1.2 cents per pound, respectively. The wood pallets, however, were separately classified by Customs officers under the provision for other containers and holders of wood, chiefly used for packing, transporting, or marketing merchandise, in item 204.30, TSUS, and were dutiable at the rate of 16⅔ percent ad valorem.

This protest involves the question of whether the pallets are subject to tariff treatment as imported articles separate and distinct from the nails, or whether they are entitled to tariff treatment as usual or ordinary types of shipping or transportation containers or holders within the meaning of General Headnote 6, TSUS. This same issue was raised in the classification of pallets which were the subject of Protest Review Division 74–13 of May 20, 1974. The resolution of the issue depends upon a case-by-case analysis of the particular pallets involved. The instant pallets were regarded as holders capable of reuse, and were classified separate from their contents. The protestant contends that the pallets are not reuseable and should be entered free of duty in accordance with General Headnote 6(b)(i), TSUS, as their contents are not subject to ad valorem rates of duty.

A wood pallet submitted directly to Headquarters was stated to be representative of the pallets which are the subject of this protest. It is approximately 41 inches by 33 inches and consists of 5 top boards and 3 bottom boards, each approximately 1 inch by 6 inches, and three

2 by 4 stringers. The stringers are made from clear stock and are entirely sound. The 1 by 6 boards are of lower quality stock, are not dressed, and show wane, knots, and other defects. They are, nevertheless, nailed solidly to the stringers. It is further indicated the pallets are designed to sustain without failure loads up to 2,400 pounds.

It was suggested that the cost of the individual pallet and the quality of wood used are the possible proper criteria for making the determination of whether or not the pallet is capable of reuse. However, there are other criteria which must also be considered. Two other important criteria are the construction of the pallet and the thickness of the wood used. In order for a pallet to be capable of reuse, it must be of a substantial design and construction.

It is also contended the pallets are expendable and intended for one-way transportation only. However, an investigation was conducted by Customs officials in order to determine whether the pallets were, in fact, reused. The investigation disclosed that three of the four companies, for whose accounts the nails were imported, were reusing the pallets.

In accordance with PRD 74–13, the phrase "designed for or capable of reuse," which appears in General Headnote 6, is to be used in a practical commercial sense. Capability for reuse is to be determined from condition at the time of importation from commercial practices, rather than the practice of the individual importer. We believe that the construction of the pallet, the thickness of the deckboards, and the use of 2 by 4's constitute a basis for finding the articles to be capable of reuse.

Since the pallets are considered capable of reuse and are, in fact, being reused, they are subject to tariff treatment as imported articles separate and distinct from their contents within the meaning of General Headnote 6(b)(ii), TSUS.

You are directed to deny this protest in full in accordance with this determination.

Your file is returned herewith.

Sincerely yours,

SALVATORE E. CARAMAGNO,
Director,
Classification and Value
Division.

October 10, 1974

PRD 74-26

District Director of Customs
Seattle, Washington 98104

DEAR SIR:

Re: Decision on Application for Further Review of
Protest No. 30042001537

This protest was taken against your decision in entry Nos. Inf. 4-87, 675, and 114, filed at the port of Blaine, Washington, with dates of liquidation, respectively, October 17, 1972, November 9, 1972, and November 13, 1972.

The protest concerns the tariff status of certain malt extract which the protestant claims to be classifiable as a fluid malt extract in item 132.25, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 20 cents per gallon. Customs officers classified the merchandise as condensed malt extract under item 132.30, TSUS, which requires a rate of duty of 15 percent ad valorem.

When the application for further review was filed on December 19, 1972, there was pending an application for an administrative ruling on the same issue filed by the protestant in September 1972. In response to that application, a ruling was issued on September 24, 1973, classifying the merchandise in question as fluid malt extract under item 132.25. While the protestant ordinarily would not be entitled to further review in these circumstances by virtue of section 174.25(b)(2)(i), Customs Regulations, we previously ruled in T.D. 71-296(4), 5 Cust. Bull. 533 (1971), that similar merchandise was classifiable as condensed or solid malt extract under item 132.30. Therefore, further review will nevertheless be accorded because the protest raises the issue of lack of uniformity of treatment which requires review by the Commissioner of Customs or his designee as set forth in section 174.26(b)(1)(i) of the regulations.

A sample of the merchandise submitted in connection with the application for an administrative ruling was found on analysis to contain approximately 80 percent solids, with the remainder of the product consisting of moisture. Although the malt extract in question is viscous, it is contended that it is fluid for the purposes of item 132.25.

In classifying the malt, Customs officers considered it condensed on the basis of T.D. 71-296(4), cited above. The merchandise in that case was described as being in bulk liquid form, concentrated to approximately 80 percent solids by removal of water, and having the consistency of thick syrup.

In *United States* v. *Britt, Loeffler & Weil*, 7 Ct. Cust. Appls. 63, T.D. 36389 (1916), certain malt extracts of the consistency of thick molasses were held to be classifiable as fluids, and not as condensed malt extracts. The court, in considering the expression "solid or condensed," stated that these terms were interpreted under prior tariff acts to mean solid only, and that reenactment of the prior acts without change required continuation of that interpretation.

On the basis of the court decision and in view of the nature of the merchandise having sufficient liquidity to permit its flow at room temperature, T.D. 71-296(4) will no longer be followed, and the merchandise should be classified as fluid malt extract under item 132.25, in accordance with our ruling issued on September 24, 1973.

Accordingly, you are directed to allow the protest in full.

Your file is returned herewith.

Sincerely yours,

SALVATORE E. CARAMAGNO,
Director,
Classification and Value
Division.

November 7, 1974

PRD 74-27

District Director of Customs
Seattle, Washington 98104

DEAR SIR:

Re: Decision on Application for Further Review of
Protest No. 30012003458

This protest was filed against your decision in the liquidation on November 10, 1972, of entry No. 111334 dated October 16, 1972, and filed at the port of Seattle, Washington.

This protest concerns the classification of an article invoiced as a "Model Ship No. 528," marketed as a "Shiplamp," and imported from Taiwan. It was classified by Customs officers under item 737.15, Tariff Schedules of the United States (TSUS), as a model, and dutiable at the rate of 17.5 percent ad valorem. The importer contends that the article is an illuminating article in chief value of wood, that the article is merely a lamp in the shape of a ship, and that it is classifiable under the provsion for household utensils of wood, in item 206.97, TSUS, and dutiable at the rate of 8 percent ad valorem.

The ship part of the lamp is a solid block of camphor wood with a flat bottom. It is 10 inches long, 10 inches high, and 2¾ inches wide.

The ship purports to be a replica of the Santa Maria by virtue of the name on the stern, but it is otherwise an approximation of a ship without a high degree of faithfulness to a real ship. Its rigging consists of metal masts and cross pieces which are welded or soldered together to form a flat framework on which the sails are placed. Only one side of the "ship" is brass trimmed. The bow sprit is also a metal rod.

Behind the flat rigging, which serves as a shade, a light similar to a Christmas tree light bulb with a metal encased socket is attached to the unrigged side of the ship with one small screw. The light has a 3½ food cord and a push type on-off switch. As a lamp, the article would be suitable for use as a corner, hallway, or bedroom night light.

Although the light socket with a cord is attached to the ship with only one screw, the lack of decoration on one side of the ship and the flat construction of the sails indicate the ship and light were designed to be used together. Accordingly, we are of the opinion the article is an entirety and, as such, it is more than a model ship, as classified by you. We find that the combination functions primarily as an illuminating article and that the illumination function is not incidental to the decorative function of the ship.

We also find that comparison of the estimated value of the electrical and other metal components with the estimated value of the wood components indicates that the value of the wood components predominates to such an extent that further proof the article is in chief value of wood is unnecessary. Therefore, the merchandise is classifiable under the provision for household utensils of wood, in item 206.97.

Accordingly, you are hereby directed to allow the protest in full.

Sincerely yours,

SALVATORE E. CARAMAGNO,
Director,
Classification and Value
Division.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1139)

J. L. WOOD v. THE UNITED STATES No. 74–21 (— F. 2d —)

1. REAPPRAISEMENT–ENGINE HEATERS–CAR WARMERS

Customs Court judgment reversing single judge, sitting in reappraisement, who sustained the dutiable values for engine heaters and car warmers claimed by appellant (plaintiff below), reversed.

2. CUSTOMS COURTS ACT OF 1970 AMENDED 28 USC 1541

The Customs Courts Act of 1970 amended 28 USC 1541 to give the Court of Customs and Patent Appeals full appellate jurisdiction over questions of both law and fact in reappraisement cases. However, its effective date limits review *in this case* to questions of law.

3. CONGRESSIONAL INTENT–EXPORT VALUE

Congress clearly intended that export value be determined by considering only the exporting country's market for exportation to United States; also that sales at wholesale to exclusive or selected agents be used in determining export value if prices fairly reflect market value. *United States* v. *Acme Steel Co.*, 51 CCPA 81, C.A.D. 841 (1964) is overruled to extent that it approved consideration of sales in domestic market of exporting country in determining export value.

4. ID.–"MARKET VALUE"

"Market value" which must be fairly reflected according to subdivision 402(f)(1)(B) of Tariff Act of 1930, as amended, is market value for exportation to the United States (i.e., export value), which is price which merchandise is able to command in the market for exportation to United States.

5. ID.–COST OF PRODUCTION

Prices to selected purchasers are to be measured against market value and not some other standard such as costs of production, since subdivision 402(f)(1)(B) requires that the price to one or more selected purchasers be one which "fairly reflects the market value," not that the price reflect a *fair* market value.

6. SALE–ORDINARY MEANING

"Sale" for purposes of sections 402(b) and 402(f) has ordinary meaning of transfer of property from one party to another for consideration.

7. ID.–UNITED STATES VALUE OR CONSTRUCTED VALUE

It is error to ignore existence of a wholly owned subsidiary in United States (importer) and to consider prices to domestic buyers from parent Canadian corporation (exporter) to sustain appraisements made on basis of imputed sales by parent (through subsidiary) to subsidiary's customers in the United States. Subsidiary was not organized for an illegal purpose, no liability is being imposed on either parent or customers, and section 402(g) provides that transactions between related persons may be disregarded *only* for purposes of *United States value* or *constructed value* and *not* where export value is involved.

United States Court of Customs and Patent Appeals,
December 5, 1974

Appeal from United States Customs Court, A.R.D. 319

[Reversed.]

Barnes, Richardson & Colburn, attorneys of record, for appellant. *Joseph Schwartz* and *Irving Levine*, of counsel.
Carla A. Hills, Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Mr. Max F. Schutzman* and *Michael S. O'Rourke* for the United States.

[Oral argument on October 2, 1974 by Mr. Schwartz for appellant and by Mr. Max F. Schutzman for the United States]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE and MILLER, *Associate Judges*.

MILLER, Judge.

[1] This appeal is from the judgment of the Third Division, Appellate Term, of the United States Customs Court, 71 Cust. Ct. 235, A.R.D. 319, 366 F. Supp. 1074 (1973), reversing the judgment of a single judge sitting in reappraisement, 68 Cust. Ct. 259, R.D. 11766, 340 F. Supp. 1398 (1972). We reverse.

FACTS

The facts recited in the opinions below are not in dispute and may be summarized as follows: The imported merchandise consists of various engine heaters and car warmers manufactured by James B. Carter, *Ltd.*, of Winnipeg, Canada ("Carter, Ltd."), and exported to its wholly-owned American subsidiary, James B. Carter, *Inc.* ("Carter, Inc."). Carter, Inc., had no office of its own or any salaried employees, and all of its management, administrative, accounting, and

billing operations were provided without charge by Carter, Ltd., in Winnipeg. The officers of Carter, Ltd., also served as officers of Carter, Inc., although none of them resided or worked in the United States. Sales [1] by Carter, Ltd., to the United States were made to Carter, Inc., and unrelated original equipment manufacturers ("OEMs"), such as General Motors, American Motors, and International Harvester. The sale terms and invoice prices to Carter, Inc., and the OEMs were the same inasmuch as they were considered to be on the same level in the chain of distribution. The imported merchandise was shipped by Carter, Ltd., directly to Carter, Inc., and the OEMs or by drop shipments straight to the next level in the chain of distribution. Sales by Carter, Inc., in the United States were conducted through sales representatives who were paid on a commission basis. Carter, Inc., maintained a substantial inventory in the United States, primarily at Fargo, North Dakota, in a public warehouse, which shipped the merchandise to approved accounts of Carter, Inc. A bank account in Fargo and separate books were maintained for Carter, Inc., which had its own price lists, warranties, and advertising and paid federal excise taxes to the United States.

Both parties agree that appraisement of the imported merchandise was properly based on export value as defined in section 402(b) of the Tariff Act of 1930, ch. 497, Pub. L. No. 361, 46 Stat. 708, 71st Cong., 2d Sess., as amended by the Customs Simplification Act of 1956, ch. 887, Pub. L. No. 927, 70 Stat. 943, 84th Cong., 2d Sess. (H.R. 6040).[2] The controversy arises over the fact that the appraisements were made, not on the basis of the invoice prices from Carter, Ltd., to Carter, Inc., but on the basis of sales at higher prices by Carter, Ltd., *through* Carter, Inc., *to* the customers of Carter, Inc.

OPINIONS BELOW

The trial court concluded that Carter, Inc., was an independent entity, that the transactions between Carter, Ltd., and Carter, Inc., were bona fide sales, so that Carter, Inc., was a bona fide selected purchaser within the meaning of subdivision 402(f)(1)(B), and that the parent-subsidiary relationship did not preclude a finding of export value. It concluded as a matter of law that the invoice prices from Carter, Ltd., to Carter, Inc., fairly reflected the market value of the imported merchandise, primarily because Carter, Inc., received the same price as the unrelated OEMs.

The appellate term reversed the judgment of the trial court, concluding that Carter, Inc., was an agent or alter ego of Carter, Ltd.,

[1] The significance of this term in the relationship between Carter, Ltd., and Carter, Inc., will be discussed infra.

[2] 19 USC 1401a(b).

and that, therefore, the Relationship between them was not that of seller and buyer. Accordingly, it held that the transactions between them must be disregarded in determining export value under section 402(b). It said that even assuming the transactions were bona fide sales, this did not prove that the invoice prices from Carter, Ltd., fairly reflected the market value; that the higher prices to warehouse distributors and jobbers in Canada demonstrated that the invoice prices to Carter, Inc., did not fairly reflect the market value, *notwithstanding that the OEMs in Canada paid prices comparable to those paid by the OEMs in the United States and by Carter, Inc.* Two separate concurring opinions were also filed, one apparently agreeing only that the record failed to establish that the invoice prices to Carter, Inc., fairly reflected the market value, and the other fully agreeing and commenting that proof independent of the prices to the selected purchasers (such as home market prices, third country prices, and exporter's production costs) was required to establish that the invoice prices fairly reflected the market value.

OPINION

Scope of Review

[2] Prior to The Customs Courts Act of 1970, Pub. L. No. 91-271, 84 Stat. 274, 91st Cong., 2d Sess., this court had the power to review only questions of law in appeals involving reappraisement. 28 USC 2637, codifying ch. 646, Pub. L. No. 773, 62 Stat. 982, 80th Cong., 2d Sess. (1948). The 1970 Act amended 28 USC 1541 to give this court full appellate jurisdiction over questions of both law and fact in reappraisement cases.[3] However, section 122 of the 1970 Act provided that the amendment to 28 USC 1541 would become effective October 1, 1970, *except* in those proceedings involving merchandise entered before the effective date for which trial had commenced by such effective date. Since the merchandise in this case entered in 1967, and trial commenced July 1, 1970, this case falls within the exception to the effective date of section 122, and, therefore, this court can review only the questions of law involved.

[3] The intent of Congress in repealing the prior restriction on this court's jurisdiction in reappraisement cases is clear from the following paragraphs contained in both the House and Senate committee reports (S. Rep. No. 91-576, 91st Cong., 1st Sess. 13 (1969); H.R. Rep. No. 91-1067, 91st Cong., 2d Sess. 12 (1970)):

Section 102 amends section 1541 of title 28 of the United States Code, relating to the jurisdiction of the Court of Customs and Patent Appeals. The Court of Customs and Patent Appeals presently has authority to review questions of both law and facts in all protest cases but only questions of law in appeals for reappraisement cases.

Section 1541(a) gives the Court of Customs and Patent Appeals appellate jurisdiction in customs cases patterned after the appellate jurisdiction of the Courts of Appeals. The Court of Customs and Patent Appeals will have authority to review all final judgments or orders of the Customs Court.

Legislative History and Intent of Section 402 as amended by the Customs Simplification Act of 1956

Section 402 of the Tariff Act of 1930, ch. 497, Pub. L. No. 361, 46 Stat. 708, 71st Cong., 2d Sess., as amended by the Customs Simplification Act of 1956, supra, provides as follows:

SEC. 402. VALUE.

. . . . . .

(b) EXPORT VALUE.—For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

(c) UNITED STATES VALUE.—For the purposes of this section, the United States value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal market of the United States for domestic consumption, packed ready for delivery, in the usual wholesale quantities and in the ordinary course of trade . . . .

(d) CONSTRUCTED VALUE.—For the purposes of this section, the constructed value of imported merchandise shall be the sum of . . . .

. . . . . .

(f) DEFINITIONS.—For the purposes of this section—

(1) The term "freely sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise, without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (i) are imposed or required by law, (ii) limit the price at which or the territory in which the merchandise may be resold, or (iii) do not substantially affect the value of the merchandise to usual purchasers at wholesale.

. . . . . .

(4) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which export value, United States value, or constructed value, as the case may be, can be satisfactorily determined:

(A) The merchandise undergoing appraisement and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise undergoing appraisement.

. . . . . .

(5) The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

(g) TRANSACTIONS BETWEEN RELATED PERSONS.—

(1) For the purpose of subsection (c)(1) or (d), as the case may be, a transaction directly or indirectly between persons specified in any one of the subdivisions in paragraph (2) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise undergoing appraisement. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then, for the purposes of subsection (d), the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subdivisions in paragraph (2).

(2) The persons referred to in paragraph (1) are:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

While adding the definitions provision in section 402(f) and transactions-between-related-persons provision in section 402(g), the 1956

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Act deleted foreign value as a basis of appraisement. The distinction between export and foreign value is concisely pointed out in a memorandum by the Tariff Commission contained in the *Hearings on H.R. 6040 Before the House Comm. on Ways and Means*, 84th Cong., 1st Sess. 9–10 (1955), hereinafter referred to as "*House Hearings*":

> The essential difference between "foreign value" and "export value" is that in the case of the former only sales for *domestic consumption* in the *country of exportation* are considered, while in the case of export value consideration is *confined* to *sales for exportation to the United States.* [Emphasis supplied.]

A major reason for deletion of foreign value as a basis of appraisement was to simplify and expedite customs administration by reducing the number of investigations made abroad.[4] However, when this was proposed, concern was expressed that tariff revenues and protection would be substantially reduced and that enforcement of the Antidumping Act of 1921 would be weakened. It was claimed that reduced tariff revenues and protection would result because sales to exclusive agents in the United States would become a basis for export value under the act.[5] The House responded by only adding a section to indicate that nothing in the Act should be construed to repeal or modify the Antidumping Act of 1921. The Senate responded by only adding another section which redesignated section 402 of the Tariff Act of 1930 as section 402a for an alternative value basis (19 USC 1402) in order to prevent any sudden material change in valuation.[6]

The Amendments to section 402 by the 1956 Act were designed to bring the United States customs valuation standards "more into conformity with the commercial realities of international trade."[7] It was said that the *definitions of the relevant terms* "would bring the valuation standards more into conformity with normal commercial practices."[8] With respect to the definitions in subsection 402(f)(1), the House Ways and Means Committee stated:[9]

> (6) A definition of "freely sold or, in the absence of sales, offered for sale" is provided for the first time. It will permit determination of an "export value" or "United States value" on the basis of sales or offers which are unrestricted except for restrictions which are imposed or required by law, which limit the resale price or territory, or which do not substantially affect the value of the merchandise to purchasers. It will also permit the use of *sales*

[4] S. Rep. No. 2560, 84th Cong., 2d Sess. 3 (1956), hereinafter "S. Rep."; H.R. Rep. No. 858, 84th Cong., 1st Sess. 4 (1955), hereinafter "H.R. Rep."

[5] *House Hearings* 44; *Hearings on H.R. 6040 Before the Senate Comm. on Finance*, 84th Cong., 2d Sess. 80 (1956), hereinafter *"1956 Senate Hearings."*

[6] S. Rep. 1–3.

[7] H.R. Rep. 7.

[8] H.R. Rep. 4; see S. Rep. 3.

[9] H.R. Rep. 10; see *Hearings on H.R. 6040 Before the Senate Comm. on Finance*, 84th Cong., 1st Sess. 17–18 (1955), hereinafter referred to as *"1955 Senate Hearings."*

> *to exclusive agents* and other restricted sales *where such sales fairly reflect the market value of the merchandise.* The present statute has been interpreted to make a "foreign value," "export value," or "United States value" unusable when the only offers made are subject to restrictions of the kinds stated. Furthermore, under the present law the price, in order to qualify, must be available to all purchasers. [Emphasis supplied.]

Also, it was pointed out in the hearings that the definition of "freely sold or offered for sale" in subsection 402(f)(1) would permit use of sales to exclusive agents.[10] Although the term "market value" in subdivision 402(f)(1)(B) was not defined in the Act, it obviously must relate to the relevant market. In the case of export value, this would be the export market in the exporting country to the United States and *not the foreign domestic market*, since use of the latter would result in a determination of foreign value, which was deleted by the Act.[11]

[3] From the foregoing, we conclude that Congress clearly intended that export value be determined by considering only the exporting country's market for exportation to the United States [12] and that sales at wholesale to exclusive or selected agents be used in determining export value if the prices fairly reflect the market value.[13] *United States* v. *Acme Steel Co.*, 51 CCPA 81, C.A.D. 841 (1964) is hereby overruled to the extent that it approved consideration of sales in the domestic market of the exporting country in the determination of export value. Congress was well aware of the double pricing practices of foreign corporations and cartels,[14] and that elimination of foreign value and use of sales to exclusive agents would result in less tariff revenues and protection. However, the only measures it retained in lieu of foreign value were the Antidumping Act of 1921 and the alternative value basis of 19 USC 1402; and the only restriction on use of prices to exclusive agents was the requirement that such prices fairly reflect the market value.

Application of Law to This Case

[4] The "market value" which must be fairly reflected according to subdivision 402(f)(1)(B) is the market value for exportation to

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[10] *House Hearings* 29; *1955 Senate Hearings* 18.

[11] *House Hearings* 120; *1955 Senate Hearings* 148.

[12] There was a proposal that export value be determined upon exports to all countries, not just the United States, but this was rejected. *House Hearings* 57; *1955 Senate Hearings* 62, 64–65.

[13] [5] Subdivision 402(f)(1)(B) requires that the price to one or more selected purchasers be one which "fairly reflects the market value," not that the price reflect a fair market value. The prices to the selected purchasers are, therefore, to be measured against the market value and not some other standard such as costs of production.

[14] *House Hearings* 36, 44; *1956 Senate Hearings* 227; 102 Cong. Rec. 13263, 13266, 13282, and 13301 (1956) (Senate debate).

the United States (i.e., export value),[15] and this is the price which the merchandise is able to command in the market for exportation to the United States.[16]

In this case, we have all necessary market evidence, since Carter, Ltd., sells for export to selected purchasers in the United States—Carter, Inc., and the OEMs. The price to the OEMs and to Carter, Inc., is the same. Because the OEMs are unrelated to Carter, Ltd., or Carter, Inc., further proof of what price the merchandise is able to command in the market is not needed.[17] We join the trial court in saying: "What better proof is there of the price fairly reflecting the market value when sales are made to other unrelated United States concerns at the same basic price."

The appellate term considered a variety of factors in the relationship between Carter, Ltd., and Carter, Inc., in determining that the transactions between them were not "sales" and that Carter, Inc., was an agent of Carter, Ltd. However, the relationship (e.g. parent-subsidiary) between an exporter and an importer is not of itself controlling on the question of export value. *United States* v. *Acme Steel Co.*, 51 CCPA 81, 87, C.A.D. 841 (1964).

The appellate term considered a variety of factors in the relationship between Carter, Ltd., and Carter, Inc., in determining that the transactions between them were not "sales" and that Carter, Inc., was an agent of Carter, Ltd. However, the relationship (e.g. parent-subsidiary) between an exporter and an importer is not of itself controlling on the question of export value. *United States* v. *Acme Steel Co.*, 51 CCPA 81, 87, C.A.D. 841 (1964). **[6]** The requirements of a "sale" for purposes of sections 402(b) and 402(f) were not defined by the appellate term, but, as previously pointed out, the legislative history clearly shows that Congress intended use of sales to exclusive agents in determining export value; and there is nothing to indicate that the word "sales" was intended to have other than its ordinary meaning, namely: transfers of property from one party to another for a consideration.[18] Moreover, the record establishes that ownership of the imported merchandise was transferred from Carter, Ltd., to Carter, Inc., for a valuable consideration.

[7] Although the parties are in dispute over whether the Customs Court "looked through" Carter, Inc., on the basis of agency prin-

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[15] *House Hearings* 120; *1955 Senate Hearings* 148; see *John V. Carr & Sons, Inc.*, v. *United States*, 52 CCPA 62, 68, C.A.D. 860 (1965).

[16] *Chr. Bjelland & Co., Inc.* v. *United States*, 52 CCPA 38, 43, C.A.D. 855 (1965).

[17] Although not stated in either opinion below, it was apparently assumed that the sales to the OEMs were substantial, and this is substantiated by the record.

[18] See *J. H. Cottman & Co.* v. *United States*, 20 CCPA 344, 356, T.D. 46114 (1932), *cert. denied*, 289 U.S. 750 (1933). The phrase "freely sold or, in the absence of sales, offered for sale" is defined in section 402(f)(1) only in terms of the types of buyers and the permissibility of certain restrictions. No definition of "sale" is given.

ciples as the government contends, or "pierced the corporate veil" as appellant argues, it is clear that the appellate term ignored the existence of Carter, Inc., and considered prices to buyers in Canada to sustain appraisements made on the basis of transactions by Carter, Ltd. (through Carter, Inc.) to jobbers in the United States. However, there is no evidence to show that Carter, Inc., was organized for an illegal purpose.[19] Indeed, appellee itself recognizes Carter, Inc., as the importer and does not propose to impose liability on either Carter, Ltd.,[20] or on the customers of Carter, Inc. Section 402(g) provides that transactions between related persons may be disregarded *only* for purposes of United States value or constructed value and not where export value is involved.[21] Moreover, the purchase orders of the jobbers were sent to and filled at a public warehouse in Fargo, North Dakota—activities wholly within the United States. *United States* v. *Massee & Co.*, 21 CCPA 54, 60, T.D. 46379 (1933).

In view of the foregoing, we hold that, for purposes of sections 402(b) and 402(f), the transactions between Carter, Ltd., and Carter, Inc., were "sales" and that the invoice prices therein involved fairly reflected the market value of appellant's merchandise.

The judgment of the Customs Court, Third Division, Appellate Term, is *reversed*.

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[19] At oral hearing, counsel for appellant stated that it was easier for an American corporation to do business with U.S. customers than for a foreign corporation. Counsel for appellee was willing to speculate that Carter, Inc., was organized for a legitimate business purpose.

[20] Even assuming Carter, Ltd., had imported the merchandise to itself, we can find no reason why the prices to the OEMs in the United States would not be the export value for the purposes of appraisement.

[21] See H.R. Rep. 10; *House Hearings* 12.

Decisions of the United States Customs Court

Customs Decision

(C.D. 4568)

DURST INDUSTRIES, INC. *v.* UNITED STATES

Metal products—Water faucets

"MORE THAN" DOCTRINE

It is, of course, a fundamental rule in judicial construction affecting tariff terms that an item which is "more than" a certain article cannot fall within the *eo nomine* provision for that article. *United States* v. *Flex Track Equipment, Ltd., Border Brokerage*

Co., Inc., 59 CCPA 97, C.A.D. 1046, 458 F. 2d 148 (1972); *Servo-Tek Products Co.* v. *United States*, 57 CCPA 13, C.A.D. 969, 416 F. 2d 1398 (1969).

SAME

However, merchandise is classifiable on the basis of its primary design, construction and function, even though it is capable of performing other auxiliary or incidental operations.

SAME—COMMON MEANING

In order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the tariff provision and compare it with the merchandise in issue. *E. Green & Son (New York), Inc.* v. *United States*, 59 CCPA 31, 34, C.A.D. 1032, 450 F. 2d 1396, 1398 (1971).

"TAPS"—"COCKS"—COMMON MEANING—COMBINATION FAUCETS

Combination faucets, comprised of hot and cold water valves and a common spout, are within the common meaning of the terms "taps" and "cocks" as used in item 680.20, TSUS.

SAME—CENTERSET FAUCETS

Centerset faucets, which comprise a "pop-up" valve as well as hot and cold water valves, are more than "taps" or "cocks" within the common meaning of those terms, as used in item 680.20, TSUS. However, the centerset faucets are properly dutiable under item 680.20 as "similar devices * * * used to control the flow of liquids * * *" since such faucets are *ejusdem generis* with taps, cocks and valves enumerated *eo nomine*.

Court No. 67/36502

Port of New York

[Judgment for defendant.]

(Decided November 26, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Robert B. Silverman*, trial attorney), for the defendant.

NEWMAN, Judge: The issue in this case concerns the correct dutiable status of certain water faucets imported from Japan in 1966 described on the commercial invoice as: "A1 CP Brass Female Combination Faucet w/dish & post" (hereinafter "combination faucet"), and "A238 CP Brass 4" Centerset w/pop up" (hereinafter "centerset faucet").

The merchandise was assessed with duty at the rate of 1.275 cents per pound plus 18 per centum ad valorem under item 680.20 of the Tariff Schedules of the United States (TSUS). Plaintiff contends

that the imports are "more than" any of the articles provided for in item 680.20, TSUS, and are properly dutiable under item 654.00, TSUS, at the rate of 10 per centum ad valorem as either sanitary wares or parts thereof, or as articles not specially provided for of a type used for household use.

STATUTES INVOLVED

Tariff Schedules of the United States:

Schedule 6. – METALS AND METAL PRODUCTS

* * * * * * *

Part 3. – METAL PRODUCTS

* * * * * * *

Subpart F. – Miscellaneous Metal Products

* * * * * * *

	Articles not specially provided for of a type used for household, table, or kitchen use; toilet and sanitary wares; all the foregoing and parts thereof, of metal:	
*	* * * * * *	
	Articles, wares, and parts, of base metal, not coated or plated with precious metal:	
*	* * * * * *	
	Of copper:	
654.00	Of brass	10% ad val.
*	* * * * * *	

Part 4. – MACHINERY AND MECHANICAL EQUIPMENT

* * * * * * *

Subpart J.—Parts of Machines

* * * * * * *

	Taps, cocks, valves, and similar devices, however operated, used to control the flow of liquids, gases, or solids, all the foregoing and parts thereof:	
680.20	Hand-operated and check, and parts thereof:	
	Of copper	1.275¢ per lb. + 18% ad val.

THE RECORD

Plaintiff presented the testimony of two witnesses: Jules Rosenkranz, vice-president of the plaintiff corporation; and Melvin Morris, a manufacturer's agent selling plumbing products. Additionally,

plaintiff submitted representative samples of the combination and centerset faucets, as well as copies of two laboratory reports by the United States Customs Laboratory at New York showing the metallic content of the samples. The entry papers were received in evidence without marking.

Defendant presented the testimony of two witnesses: Robert W. Sullivan, executive vice-president of the Valve Manufacturers Association; and Theodore H. Johnson, product manager in charge of plumbing fittings for American Standards, Inc.

Facts

The combination faucet is the common kitchen sink type of fixture having inlets for hot and cold water, and a valve for each inlet designed to control the flow of water through a single spigot or spout. By opening or closing the valves, the volume of hot and cold water running through the faucet can be controlled so that the temperature of the water flowing from the spout can be regulated. The term "combination" refers to the fact that both hot and cold water valves utilize a common spout in the faucet. Thus, hot and cold water may be so mixed as to regulate the temperature of the water flowing from the spout. Mr. Rosenkranz described this mixing features (R. 42–43):

> Q. How is it that this article, Plaintiff's Exhibit 1, mixes the temperature of water?—A. Well, it allows—there's an opening on each end; one is connected to a hot water line and the other one is connected to a cold water line. When both valves are opened, water flows through the center portion of the body and flows out of the spout.
>
> Q. All right.—A. And you are controlling the temperature, depending how much of the opening you have on each of the valves.
>
> Q. So then just by manipulating the hot water valve, the spout would only have hot water coming out of it, and just by manipulating the cold water valve we would only have cold water?—A. Yes.
>
> Q. Or any combination of the two.—A. That's correct.

Also, attached to the combination faucet by a post is a soap dish, which constitutes approximately ten percent of the cost of the article.

The centerset faucet is the common lavatory type of fixture and operates in the same manner as the combination faucet. However, in addition, the centerset faucet comprises a "pop-up" valve or drain which is designed to retain water in the basin when the drain is closed and to permit the flow of water from the basin into a drainage pipe when the drain is open. The pop-up valve is controlled by means of a handle, which moves up and down through a hole behind the

spout of the centerset. Mr. Rosenkranz described the operation of the "pop-up" valve (R. 49–50):

> Q. I believe you testified on direct examination that the function of the pop up valve controls the waste water.—A. Yes.
>
> Q. Can you explain how that controls the waste water?—A. By lifting the knob in an upward position it seals the outlet portion of the basin from water flowing out. Conversely, compressing the knob would raise the valve portion of the fixture upward, allowing the water to flow out. It closes and shuts water flows, is what it really does. Opens and closes water flows.
>
> Q. Are there only two positions, open and closed, or can it be adjusted to any combination?—A. It can be adjusted to any combination.
>
> Q. And by adjusting the pop up valve you can determine or control the——A. The amount.
>
> Q. Of water that flows out?—A. That is correct.
>
> Q. And the speed with which the water would flow out?—A. Yes.

Defendant's witness Johnson also explained the operation of the pop-up valve (R. 120):

> Q. Now Plaintiff's Exhibit 2 additionally consists of a pop up valve.—A. Yes, that's correct.
>
> Q. Would you please describe that?—A. The pop up valve is a device that is placed in the bottom, or the outlet portion of the lavatory, and attached to the ware, and by mechanical operation of a rod and a knob in the rear portion of the body of the fitting, the mechanical advantages are produced so that the plunger, the stopper is moved up and down to open and close this particular valve.
>
> Q. And what is the function of the valve?—A. The valve—this valve is designed to really stop and control and start the flow of the waste water that's in the basin of the lavatory.

Contentions of the Parties

In support of its "more than" theory, plaintiff contends that " 'taps', 'cocks' and 'valves' have only *one* moving part (spindle) to control the flow of liquids, gasses [sic] or solids, whereas the imported articles are combinations of other things, *containing* two or more valves which permit the articles to function primarily as hot and cold water mixing devices". Further, argues plaintiff, the imports "are not themselves bought, sold or commonly known as 'taps', 'cocks' or 'valves', and they are not similar to such things". Plaintiff claims that the merchandise is classifiable as sanitary wares or parts thereof, or alternatively, as articles not specially provided for of a type used for household use.

Defendant contends that the imported articles are within the common meaning of the *eo nomine* provisions for "taps" or "cocks". Alternatively, defendant claims that the imported articles are classifiable under item 680.20 as "similar devices * * * used to control the flow of liquids, gases, or solids".

DECISION

It is, of course, a fundamental rule in judicial construction affecting tariff terms that an item which is "more than" a certain article cannot fall within the *eo nomine* provision for that article. *United States* v. *Flex Track Equipment, Ltd., Border Brokerage Co., Inc.*, 59 CCPA 97, C.A.D. 1046, 458 F. 2d 148 (1972); *Servo-Tek Products Co.* v. *United States*, 57 CCPA 13, C.A.D. 969, 416 F. 2d 1398 (1969). However, merchandise is classifiable on the basis of its primary design, construction and function, even though it is capable of performing other auxiliary or incidental operations. *Trans-Atlantic Company* v. *United States*, 60 CCPA 100, C.A.D. 1088, 471 F. 2d 1397 (1973); *United Carr Fastener Corporation* v. *United States* (*Northern Screw Corp., Party in Interest*), 54 CCPA 89, C.A.D. 913 (1967); *J. E. Bernard & Co., Inc.* v. *United States*, 66 Cust. Ct. 362, C.D. 4215 (1971); *Fedtro, Inc.* v. *United States*, 65 Cust. Ct. 35, C.D. 4050 (1970); *Schick X-Ray Co., Inc.* v. *United States*, 64 Cust. Ct. 430, C.D. 4013 (1970); *Astra Trading Corp.* v. *United States*, 56 Cust. Ct. 555, C.D. 2703 (1966).

Respecting the "more than" doctrine, the majority of the appellate court observed in *E. Green & Son* (*New York*), *Inc.* v. *United States*, 59 CCPA 31, 34, C.A.D. 1032, 450 F.2d 1396, 1398 (1971):

> Only the most general of rules can be ascertained from the previous decisions dealing with the "more than" doctrine, and it appears that each case must in the final analysis be determined on its own facts. See *United Carr Fastener Corp.* v. *United States*, 54 CCPA 89, C.A.D. 913 (1967), and the cases cited therein. *In order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the tariff provision and compare it with the merchandise in issue.* It is well established that in determining the common meaning of a term or word used in a tariff provision, court decisions, dictionary definitions, and other lexicographical authorities may be considered. [Emphasis added.]

Hence, the common meaning of the *eo nomine* provisions for "taps", "cocks", and "valves" must be determined and compared with the merchandise.

While plaintiff's and defendant's witnesses were in disagreement concerning whether the articles in issue are within the common meaning of "taps", "cock", or "valves", the record establishes that the

imports are commonly referred to in the plumbing trade as "faucets." The following definitions indicate that "taps" and "cocks" are commonly defined as "faucets"; and conversely, "faucets" are commonly defined as "taps" and "cocks". Thus:

Webster's Third New International Dictionary (1966), at 2339, 435, and 829:

> **tap** – 1 * * * b: a device consisting of a spout and valve that is attached to the end of a pipe to control the flow of a liquid or gas: FAUCET, COCK * * *.
> **cock** – * * * 2: a faucet, tap, valve, or similar device for starting, stopping, or regulating the flow of a liquid * * *.
> **faucet** – * * * 2: a fixture for drawing a liquid from a pipe, cask, or other vessel: TAP, COCK * * *.

Chambers' Technical Dictionary (1943), at 324:

> **faucet** (*Plumb.*). (1) A small tap or cock. * * *

Dictionary of Mechanical Engineering (1961), at 71 and 124:

> **cock**
> See "faucet".
> **faucet**
> A valve on a water pipe by means of which water can be drawn from or held within the pipe. The valve is placed on the end of the pipe.

Audels Mechanical Dictionary (1942), at 228:

> **Faucet.** * * *
> 2. A cock or tap for water or other liquids.

Additionally, *Summaries of Trade and Tariff Information*, Schedule 6, Volume 10 (1969), at 81, explains the terms "tap" and "cock" appearing in the superior heading to item 680.20, TSUS:

> The term "tap" generally refers to a screwed plug type of valve such as that used in common household faucets. Cocks are simple valves in which the fluid passage is a hole in a rotatable plug fitted in the valve body. Rotation of the plug through a right angle stops the flow by opposing it to the undrilled diameter of the plug. Cocks are used to control the flow of material within a piping system rather than at the terminal of the system. * * *

While, as indicated in the *Summaries*, the term "tap" may refer to a "screwed plug type of valve such as that used in common household faucets", the lexicographic authorities quoted *supra* clearly indicate that faucets *per se* (which include a *spout* as well as a valve) also are "taps" within the common meaning of the term.

Plainly from the lexicographic authorities cited above the combination faucets are within the common meaning of the terms "taps" and "cocks". I am clear that Congress did not intend to differentiate, for tariff classification purposes, between faucets comprised of a single

valve and spout and combination faucets comprised of two valves and a common spout. The combination faucets are simply a mechanical advancement over the single type in controlling the flow of water in such a manner that hot and cold water may be mixed. In this connection, it is pertinent to note that item 680.20, TSUS, as originally published for hearing by the Tariff Commission, was similar in language to heading 84.61 of the *Brussels Nomenclature* (1955).[1] See *Tariff Classification Study, Explanatory and Background Materials*, Schedule 6 (Nov. 1960), at 460 and 881–882. In the *Explanatory Notes to the Brussels Nomenclature*, 1955, Volume III at 915, among the articles included in heading 84.61 are: "(12) Mixing taps and valves, with two or more inlets and a mixing chamber."

In view of the foregoing considerations, I find no merit in plaintiff's contention that the provisions for taps and cocks in item 680.20, TSUS, are limited to devices with a single moving part. Therefore, the combination faucets, having both hot and cold water valves and a common spout, are properly classifiable as taps or cocks under item 680.20, TSUS.

The centerset faucets, however, which comprise a pop-up valve as well as hot and cold water valves are, "more than" taps or cocks within the common meaning of those terms. As previously mentioned, the pop-up feature is designed to retain water in the basin and to control the flow of waste water and thus is obviously a significant element of the article.

To reiterate, defendant urges (in the alternative) that if the imported merchandise is not within the common meaning of "taps" or "cocks", then the merchandise is classifiable under item 680.20, TSUS, as "similar devices * * * used to control the flow of liquids * * *".[2] Respecting such contention, both parties agree that the doctrine of *ejusdem generis* is applicable. That doctrine is frequently invoked by the courts to ascertain the meaning or scope of a general description following particularly enumerated articles. *United States* v. *Damrak Trading Co., Inc.*, 43 CCPA 77, C.A.D. 611 (1956); *Nomura (America) Corp.* v. *United States*, 62 Cust. Ct. 524, C.D. 3820 (1969); *Kotake Co., Ltd., American Customs Brokerage Co.* v. *United States*, 58 Cust. Ct. 196, C.D. 2934 (1967). Thus, defendant argues that taps, cocks and valves control the flow of liquids, which is their common function; and that inasmuch as the imports also function primarily

[1] Item 680.20, TSUS, as originally published for hearing by the Tariff Commission provided:

"Taps, cocks, valves, and similar appliances, for pipes, boiler shells, tanks, vats, and similar articles, including pressure-reducing valves and thermostatically-controlled valves:

Hand-operated and swing-check valves".

[2] Defendant does not contend that the merchandise is classifiable as "valves".

to control the flow of liquids, they are similar devices to taps, cocks and valves within the purview of item 680.20. I agree.

The centerset articles are essentially combination faucets having hot and cold water valves with an additional feature—the pop-up valve. Nevertheless, the presence of the pop-up valve does not alter the function of the article to control the flow of water, and hence is *ejusdem generis* with taps, cocks and valves.

In conclusion, I need not decide whether the imports are also sanitary wares or parts thereof, or articles of a type used for household use, as claimed by plaintiff, since in any event they are more specifically described in item 680.20, TSUS.

The protest is overruled, and judgment will issue accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DEPARTMENT OF THE TREASURY, *December 2, 1974.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/385	Re, J. November 26, 1974	Balfour, Guthrie & Co., Ltd., et al.	R59/6700, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros., & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/386	Re, J. November 26, 1974	Building Products Co.	R58/12788	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/387	Re, J. November 26, 1974	Geo. S. Bush & Co., Inc., et al.	R58/20963, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/388	Re, J. November 26, 1974	Geo. S. Bush & Co., Inc., et al.	R59/16766, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/389	Re, J. November 26, 1974	Page & Jones, Inc.	R61/16040	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Mobile Japanese plywood
R74/390	Re, J. November 26, 1974	Pan Pacific Overseas Corp.	R59/5574	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New Orleans Japanese plywood
R74/391	Re, J. November 26, 1974	Pan Pacific Overseas Corp.	R60/15642	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R74/392	Re, J. November 26, 1974	Wood Mosaic Industries, Inc.	R59/6440	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/393	Re, J. November 27, 1974	Borneo Sumatra Trading Co.	R61/13664, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood

R74/304	Re, J. November 27, 1974	Castelazo & Associates et al.	R60/13160, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/305	Re, J. November 27, 1974	Fidelity Trading Co., Inc.	R60/16765, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/306	Re, J. November 27, 1974	William H. Masson, Inc., et al.	R59/17094, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R74/307	Re, J. November 27, 1974	Mattoon & Co., Inc.	R60/16767, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/308	Re, J. November 27, 1974	B. A. McKenzie & Co., Inc.	R58/11631	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/309	Re, J. November 27, 1974	Pan Pacific Overseas Corp.	R60/17724	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Miami Japanese plywood
R74/400	Re, J. November 27, 1974	Wood Mosaic Industries, Inc.	R59/6528	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood

Judgment of the United States Customs Court in Appealed Case

NOVEMBER 25, 1974

APPEALS 74–8 and 74–15.—Quigley & Manard, Inc. v. United States.—COMPLAINT UNTIMELY FILED—MOTION TO COMPEL FILING DENIED—DISMISSAL FOR LACK OF PROSECUTION—REHEARING DENIED.—Orders of April 5, 1973 and July 24, 1973 (not published), affirmed May 30, 1974. C.A.D. 1121.

ERRATUM

In Customs Bulletin of November 27, 1974, Vol. 8, No. 48, C.D. 4563, page 30, 3rd line, change "Title 10" to read "Title 19".

also

On page 35, after the sixth line insert this paragraph:

Applicable here are the following comments of the District Court in *Kindrew* (352 F. Supp. at 278):

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *December 12, 1974.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs Officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[TEA-W-253]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of El Rey of Hollywood, Inc., Los Angeles, California, the United States Tariff Commission, on November 26, 1974, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in items 700.45 and 700.55 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number of proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register.*

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets,

N.W., Washington, D.C., and at the New York City office of the Tariff Commission located at 6 World Trade Center.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued November 26, 1974.

[TEA-W-254]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of Baxter Woolen Co., Inc., Rochester, New Hampshire, and Stafford Processing Corp., Rochester, New Hampshire, the United States Tariff Commission, on November 27, 1974, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with woven fabrics, including laminated fabrics, of wool (of the types provided for in items 336.60 and 359.30 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register.*

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued November 27, 1974.

[TEA–F–67]

PETITION OF JOSEPH WEISS & SONS, INC., FOR A DETERMINATION UNDER SECTION 301(c)(1) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation and hearing

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962 on behalf of Joseph Weiss & Sons, Inc., Brooklyn, New York, the United States Tariff Commission, on December 3, 1974, instituted an investigation under section 301(c)(1) of the said Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with manufactured granite (of the types provided for in item 513.74 of the Tariff Schedules of the United States) produced by the aforementioned firm, are being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to such firm.

A public hearing in connection with this investigation will be held beginning at 10 a.m., E.S.T., on December 19, 1974, in the Hearing Room, U.S. Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. Requests for appearances at the hearing should be filed with the Secretary of the Commission, in writing, at his office in Washington, D.C., no later than noon, Thursday, December 12, 1974.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C. 20436, and at the New York City Office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued December 3, 1974.

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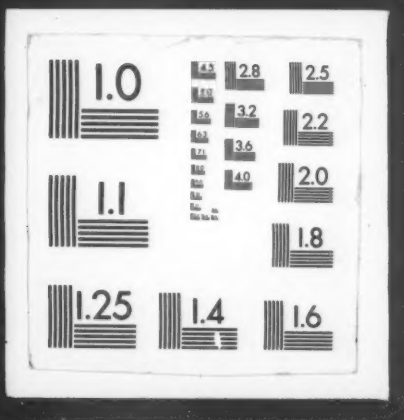
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